IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.1180 OF 2003
IN
SECOND APPEAL NO.696 OF 2002

1.Smt. Banabai Baba Padolkar and Ors..... Applicants
Versus
1.Savappa Balku Padolkar and Ors. ..... Respondents

Mr.S.M.Oak for applicants

CORAM : P.V.KAKADE, J.

DATE : 16TH SEPTEMBER, 2005

P.C.:

1. Heard the learned counsel for the applicants. None appears for the respondents.

2. This is an application to set aside the interim relief granted by this Court on 7th October 2002 in Civil Application No. 1008 of 2002 in Second Appeal No.696 of 2002 be vacated.

. The impugned order under Civil Application No.1008 of 2002 reads thus -

"Leave to amend. For the reasons stated

in the application and the memo of the Appeal, the same is allowed in terms of prayer clause (a). Liberty to the respondents to move for modification of the Order for justifiable reason, if any. Application stands disposed of."

This order is sought to set aside on the ground that it is settled law that acquisition of land under the provisions of Land Acquisition Act cannot be challenged by way of filing a suit and therefore, it is submitted that the suit filed by Respondent NO.1 to 6 is not maintainable as admittedly the Respondent Nos.1 to 6 have challenged the acquisition of the said land under the provisions of Land Acquisition Act.

3. In my considered view, the order passed by this court disposing the Civil Application No.1008 of 2002 cannot be set aside, especially when the substantial question of law framed by the Court at the time of admission of the matter go to the root of the dispute which is sought to be invoked by this application, and therefore, this is not the stage to go into the merits of the matter.

4. Under the circumstances the prayer for vacation of the order cannot be allowed. It was alternatively submitted that the Respondent Nos.1 to 6 be directed to deposit an amount of Rs.3 lacs that is yearly income from the year 1991 to 2002 and thereafter they further be directed to deposit the amount of Rs.25,000/= per year during the pendency of this Appeal. However, in this regard it must be noted that there is no evidence in this application available regarding the yield and the income from the land and therefore, bare word of the application cannot be accepted in that regard. Under the circumstances the application has no merits and stands dismissed with no order as to costs.